mately 1000 tons per month commencing from September 1973 subject to 2 months' notice in advance from the plaintiffs for detailed requirements of size and quantity.

The plaintiffs/applicants went on to allege that their first attempt to obtain performance of the contract failed and on 12th of November 1973 the defendants through their solicitors repudiated the contract and denied its existence.

They also alleged that in consequence they suffered damage and therefore prayed for damages and loss of profits continuing and costs.

The defence was a denial that the defendant company had made the alleged or any agreement with the plaintiff company. The defendants then averred: —

(Paragraph 2 of Statement of Defence) — "In the first alternative, the alleged agreement was entered into by one Lim Tuck Fatt, purportedly on behalf of the defendant company but in fact outside the scope of his authority."

(Paragraph 3 of Statement of Defence) — "In the second alternative, the alleged agreement is void on the ground that one Lim Foo Yong, as the then Managing Director of the defendant company has failed to declare his interests in the alleged agreement as he was under duty so to do by Article 104 of the Defendant Company's Articles of Association."

In paragraph 4 of the statement of defence, the defendants averred that the alleged agreement was to defraud the defendant company as well as the shareholders of the defendant company and to cause each of them loss, giving particulars of the fraud.

In paragraph 5 they alleged that the plaintiff company and certain named persons wrongly conspired among themselves with intent to injure, *inter alia*, the defendant company and its shareholders, and in paragraph 6 they further averred that if there was the alleged or any agreement it was a forged document done after the sale to the said Peh Kong Wan of 1,250,000 shares in the defendant company, and therefore they maintained that the alleged agreement was unenforceable and void being unlawful.

In counterclaiming the defendants then repeated their averment in paragraphs 4, 5 and 6 of their statement of defence. In short, they alleged that the plaintiffs had committed the tort of conspiracy, the effect of which was to make static the price of steel bars to be supplied to the plaintiffs for a period of at least 39 months, thereby causing loss to defendants, and gave as particulars of damage the sum of $7,800,000. The defendants counterclaimed, *inter alia*, for:

"(a) Against the plaintiff company declaration that the alleged agreement was invalid and unenforceable against defendant company;

(b) Against the plaintiff company, rescission of the alleged agreement;

(c) Against the plaintiff company, the said Lim Foo Yong, the said Lim Ooi Beng and the said Lim Tuck Fatt under paragraphs 4, 6, and 12 hereof, damages;

(d) Against the plaintiff company, the said Lim Foo Yong, the said Lim Ooi Beng and the said Lim Tuck Fatt under paragraph 5 hereof, damages for unlawful conspiracy to injure the defendant company;"

Clearly if defendants can prove that there had been such a conspiracy then there is a right of action, for if, in the words of Viscount Simon L.C. in *Crofter Hand Woven Harris Tweed Co. Ltd.* v. *Veitch*[1] "... as the result of such unlawful combination and misdemeanour, a private person receives a private injury, that gives such person a right of action."

It will suffice for me to cite a very pertinent passage from *Mallal's* Supreme Court Practice. Under Order 25 rule 4 under the heading "Striking Out a Pleading" the learned author said: —

"It is only in plain and obvious cases that recourse should be had to the summary procedure under this rule, for example, where the statement of claim discloses no cause of action. Thus in *Prince* v. *Gregory*, [1959] 1 All E.R. 133; [1959] 1 W.L.R. 177, a statement of claim which disclosed no cause of action in so far as it affected the second defendant was struck out. As to the question whether a plaint discloses a cause of action, it was held in *Peek* v. *Russell* (1923), 4 F.M.S.L.R. 32, C.A., that the plaint and its documents alone should be considered and all the allegations in it should be assumed to be true. If there is a point of law which requires serious discussion, an objection should be taken on the pleadings, and the point set down for argument under r. 2. *Low Yat* v. *Grace* [1947] M.L.J. 115, *Cadam & Ors.* v. *Beaver-brook Newspapers Ltd.* [1959] 1 Q.B. 413; [1959] 1 All E.R. 453; [1959] 2 W.L.R. 324, C.A. If there is an issue to be tried it can only be tried by the pursuing its normal course and being heard in open Court. *Low Yat* v. *Grace, supra.*"

I am satisfied that on the pleadings there are undoubtedly triable issues both of fact and of law.

The application is accordingly dismissed with costs.

Application dismissed.

Solicitors: *Skrine & Co.; Mah-Kok & Din.*

THE COLLECTOR OF LAND REVENUE, KOTA BHARU v. YUSOFF BIN YUNUS

[O.C.J. (Mohamed Zahir J.) March 27, 1977]
[Kota Bharu — Land Office File No. KES/KB 8771]

Land Law — Sale of land — Procedure at sale — National Land Code, s. 265(3)(c).

Practice and Procedure — Proceedings in chambers — Application under National Land Code, s. 265(3)(c) — Parties — Function of Collector — R.S.C. 1957, O. 54 r. 1.

Under section 265(3)(c) of the National Land Code it is the duty of the chargee to file the summons. It will be sufficient for the Collector to issue a certificate of reference to the court and deliver it to the chargee, if requested by the chargee. The certificate shall contain the particulars of the land and the reasons of the unsuccessful sale.

ORIGINATING SUMMONS.

Parties not represented.

Mohamed Zahir J.: The Collector of Land Revenue, Kota Bharu referred the above matter to this court by sending up the relevant Land Office file No. KES/KB 8771 addressed to Tuan Pendaftar Kanan, Mahkamah Tinggi Malaya, Kota Bharu with the following note on the cover:

"Diangkat untuk tindakan tuan selanjutnya dibawah Sec. 265(3)(b) K.T.N.

Sgd.
Pemungut Hasil Tanah,
Kota Bharu. 14/3/77."

Enclosed in the file is an affidavit sworn by one Ibrahim bin Ismail, Assistant Collector of Land Revenue, Kota

Bharu, affirmed on March 14, 1977, deposing that the sale of the above land was conducted twice and at both sales there were no bidders. The file also contains the relevant papers relating to foreclosure proceedings in respect of the said land. The chargee is MARA.

So as to avoid any uncertainty as to the procedure to be taken by a collector under section 265(3)(b), I wish now to record what my views are on these matters. I notice in Trengganu the practice is that the collector files an Originating Summons in the High Court supported by an affidavit applying usually for a court sale under section 265(3)(c) at a reduced reserve price.

I am of the opinion that neither of the above procedures is proper. Sending up the file to the court, as was done in this case, would not be sufficient as Order 54 rule 1 of the Rules of the Supreme Court stipulates as follows:—

"Every application at Chambers shall be made by summons."

To adopt the other procedure will undoubtedly reduce the function of the collector to that of the chargee. In other words the collector will be doing the work of the chargee, which as an administrative officer, the collector is not supposed to do. In adopting this procedure the collector will have to serve the summons on the chargor and if the chargor dies in the meantime, to apply for L/A or appoint someone else to represent his estate or to apply for substituted service or service out of jurisdiction as the case may be. There is also the question of who will foot the bill. The collector may be held unnecessarily responsible for damages or costs for any defaults. The chargee during these processes is a mere onlooker.

Section 265(3)(c) of the Land Code provides the court may "make such order as it may think just" and it is my opinion that it should be the chargee who should ask for any order of the court and not the collector and it would appear to me in the circumstances it is the duty of the chargee to file the summons for any such order. The chargee may or may not wish to take the matter to the court and this is another matter for the chargee to decide and not the collector.

It appears that the confusion arises from the wording of section 265(3)(b) of the Code which reads as follows:—

"(b) The Collector shall refer the matter to the Court; and"

But I am of the opinion the above provision does not make it mandatory that the collector should make the application personally. It is enough if he refers the matter to court by way of certificate or letter.

I am therefore of the opinion that in matters of this nature it will be sufficient for the collector to issue a certificate to be called Certificate of Reference under section 265(3)(b) addressed to the court if requested by the chargee and deliver it to the chargee. Such certificate should contain the particulars of sale of the land concerned and the reasons for the sale not being successful. Being a valuation officer, the collector should also certify if the reserve price fixed is the market price. This will guide the court if an application is made for the reduction of the reserve price.

The chargee will then apply by way of Originating Summons to the court, supported by affidavit exhibiting the Certificate of Reference of the collector, for any order he may deem expedient. The summons should be served on the chargor. It may be noted that under section 265(3)(c) the court may order that the collector put up the land sale for a third time without having to undergo the cumbersome and more expensive court sale process, particularly if the reserve price of the land is so low, as it is in this case (only $1,300/-).

I accordingly direct the parties herein to adopt this procedure which will form the practice for similar cases in the future.

Order accordingly.